presenting their respective causes, that the Board here erred out of a spirit of tenderness towards the tenant in determining to re-hear this application. Accordingly I must, if necessary, issue the writ of prohibition, which it will probably be quite unnecessary to do, as the Board will no doubt treat this as the equivalent of a writ in itself.

After subsequent discussion His Lordship said that the writ should be drawn up but would lie in the Registry until further order.

Costs awarded against the Respondent (the Tenant).

Solicitors for the Applicant (the Landlord)—
Sisson & Delay.

Solicitor for the Respondent (the Tenant)—
E. R. Koek.

[ORIGINAL CIVIL JURISDICTION.]

THE STATE OF SELANGOR .. Plaintiff

vs.

KEPONG DREDGING CO., LTD. .. Defendants

[SELANGOR CIVIL SUIT No. 254 of 1932.]

Courts Enactment, 1918, Section 77 (i) (c), Rules 1929, Second Schedule, Item 3—Costs of consulting authorities and getting up the case for trial.

Item 3 in the Second Schedule of Advocates' and Solicitors' fees is intended only to apply to the preparation of a suit for trial or for getting up a case for appeal. Until the pleadings are closed and the issues joined between the parties, it is premature for a solicitor to attend upon witnessess to produce evidence, or get up the case for trial.

V. Mackie for Plaintiff.

W. V. D. Skrine for Defendants.

THORNE, AG. C.J.—The plaintiff sued the defendant Company to recover the sum of $10,469.44 alleged to be due to the plaintiff under the terms of an agreement in writing made between them and dated the 6th day of February 1928, which was an agreement for the supply of electrical energy for the operation of the defendants' dredge.

The defendants applied for leave to appear and defend, and on the 9th of June 1932 the Registrar gave such leave. Thereafter the parties entered into negotiations for a settlement, one of the terms of which was that the plaintiff's costs should be taxed by the Court as between party and party. The plaintiffs filed a bill for taxation in which they charged an item—

"Consulting authorities and getting up case —$500."

Upon taxation the Registrar taxed off $400, thus allowing to the plaintiff the sum of $100.

The plaintiff appealed against the decision of the Registrar disallowing $400 out of the $500 charged. The defendants appealed from the decision of the Registrar allowing the plaintiff $100 on this item. The matter was argued before me in Chambers on the 22nd of July, whereupon I made an order dismissing the plaintiff's appeal, and allowing the defendants' appeal, with costs, which I assessed at the sum of $25.

The item appears as No. 3 in the Schedule of the Rules, at page 288 of the volume of the 1929 Enactments. The Rule reads as follows:—

> "The Registrar may allow a general fee for consultation of authorities, attendance upon witnesses, producing evidence, and getting up the case for trial or for appeal, having regard to all the circumstances."

This has been taken from item 78 of the Schedule of costs in the Colony of the Straits Settlements. A comparison of the two items shows that the words "consultation of authorities" have been introduced in the Federated Malay States item.

The item is intended to reimburse the litigant for work done in the preparation of the case for trial, which under the English practice would be included in two items, namely, 'instruction for brief and fee on brief.' In the Colony of the Straits Settlements the item has always been construed as covering only the getting up of the evidence and facts of the case and as not including the search for and noting up of authorities, and generally getting up the law.

In the Federated Malay States the introduction of the words 'consultation of authorities' makes it clear that this item is intended to cover the preparation of the case for trial both as to the facts and the law.

It seems clear, however, that the item is intended only to apply to the preparation of a suit for trial or for getting up of a case on appeal.

In this case the proceedings had gone no further than an application for leave to appear and defend in the suit. Until the pleadings had been closed and the issues joined between the parties, it was impossible to know what evidence would be necessary on the part of the plaintiff. It was, therefore, premature for the plaintiff's advisers to attend upon the witnesses to produce evidence or get up the case for trial.

In my view, this item cannot be charged until the case has proceeded to such a stage that the plaintiff's advisers know what are the issues of fact and law to be debated at the trial. Usually that stage will not be reached until the pleadings have been closed, and as in this case the defendants had not filed their defence, I held that the item was not chargeable at all.

Solicitors for the Plaintiff—*Freeman & Madge.*

Solicitors for the Defendant—*Bannon & Bailey.*

[APPELLATE CRIMINAL JURISDICTION]

THE KING .. .. **Respondent**

vs.

DORA STREZESZAK .. .. **Appellant**

[SINGAPORE MAGISTRATE'S APPEAL No. 41 OF 1932]

Ordinance 117 (Chandu Revenue) Sections 11, 12 and 36—Penalty—Imprisonment in default.

When a person is convicted of importing chandu and is sentenced to a fine with imprisonment in default but is not sentenced to peremptory imprisonment the imprisonment in default of payment of the fine may, according to the amount of the fine, amount to two years.

The appellant was convicted in the District Court of Singapore on a charge of importing 1362 tahils of chandu by S.S. Carthage on 12th October, 1932 contrary to Section 11(1) of Ordinance 117 (Chandu Revenue) the penalty for which offence is prescribed by Section 12.

The value of the chandu was $9534.

She was sentenced to pay a fine of $15,000 and in default of payment to undergo two years Rigorous Imprisonment.

The appellant appealed against conviction and sentence.

Page for appellant. The sentence of two years in default of payment of the fine is illegal. The maximum peremptory imprisonment which a magistrate can impose under Section 12 is twelve months.

If he imposes a fine only he cannot order more than twelve months in default, otherwise he could by imposing a large enough fine defeat the restriction of 12 months. Section 36 must be construed as being limited by Section 12.

McElwaine, D.P.P. for the Crown. Section 12 authorises the following sentences in this case:—

(1) Fine of $95,340—the imprisonment in default is determined by Section 36 and may amount to two years.
(2) Peremptory imprisonment for 12 months.
(3) Both a fine of $95,340 with 2 years in default *and* 12 months R.I. peremptory.

If both fine and imprisonment had been ordered appellant would have been liable to 3 years if she did not pay. See Section 36 Proviso (*b*). The fact that she is given the option of a fine without peremptory imprisonment does not limit the imprisonment in default clearly authorised by Section 36.

TERRELL, J. in dismissing the appeal said that in his opinion Sections 12 and 36 were complementary and that the imprisonment in default ordered under Section 36 was not restricted by Section 12 if the fine under the latter section was of such an amount as involved the imprisonment for non-payment which was authorised by Section 36. The appeal was therefore dismissed and the conviction and sentence confirmed.

Solicitors for appellant—*Allen & Gledhill.*

[ORIGINAL CRIMINAL JURISDICTION]

REX vs. KHOR TENG QUEE

[SINGAPORE 6th ASSIZE CASE No. 2 of 1932]

Criminal law—Procedure—juryman having possible interest in result of case—competancy of.

After the opening for the prosecution had proceeded for some time it transpired that one of the Jury had a possible interest in the result of the case.

Held that it was not competent for the juryman to sit.

Knowles for the Crown.

Walters for the Defence.

Counsel attended in Chambers before the Judge and the cases *Dimes* v. *The Grand Junction Canal Co., Ltd.* 10 Eng. Reps. H.L. 758; 3. H.L.C. 759 and *The Queen* v. *The Justices of Great Yarmouth*, VIII Q.B.D. 525 (observations of Field J. at p. 527) were referred to.

WHITLEY, J.—It has been brought to my attention that one of the members of the jury is connected with a bank which may have some interest in a bank which I understand will be mentioned in the course of this case.

That being so, it seems to me that although that gentleman may not himself be aware that he has any interest in the case, the law of England is very clear on the subject that where there is any danger, at any time, of a judge, magistrate or member of the jury having an interest in the matter, it is desirable he should not sit and that somebody else should be substituted. That being so, I ask that the names of the other six gentlemen of the jury should be called and they should take their place, and that then another juryman be substituted for this gentleman, who, it seems to me, it would not be fair to ask to sit on this case.